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No. 484

In the Supreme Court of the United States

October Term, 1943

In the Matter of the Application of Ann Stanziale for a Writ of Habeas Corpus to Inquire Into the Cause of the Detention of Adolph Stanziale, Ann Stanziale, petitioner

v.

Lt. Col. Holmes G. T. Paulsen, Commanding Officer, Fort Lee, N. J.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit

Brief for the Respondent in Opposition

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No. 484

IN THE MATTER OF THE APPLICATION OF ANN STANZIALE FOR A WRIT OF HABEAS CORPUS TO INQUIRE INTO THE CAUSE OF THE DETENTION OF ADOLPH STANZIALE, ANN STANZIALE, PETITIONER

v.

LT. COL. HOLMES G. T. PAULLIN, COMMANDING OFFICER, FORT DIX, N. J.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the circuit court of appeals (R. 42a–50a) is not yet reported. The findings of fact and conclusions of law of the district court (R. 11a–14a) are reported at 49 F. Supp. 961.

JURISDICTION

The judgment of the circuit court of appeals was entered October 6, 1943 (R. 51a). The petition for a writ of certiorari was filed November 10,

1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

ADMINISTRATIVE REGULATIONS INVOLVED

Selective Service Regulations 622.31 and 622.32, as they stood at the dates of the classifications involved in this case, appear in the Record at pp. 20–22.

QUESTION PRESENTED

Whether there was substantial basis for the action of the Selective Service boards in reclassifying petitioner's husband, Adolph Stanziale, from Class III–A (deferred by reason of dependency) to Class I–A (available for military service).

STATEMENT

Adolph Stanziale registered with local selective service board No. 10, Essex County, New Jersey, on October 15, 1940 (R. 11a). He was married on June 1, 1941 (R. 21a). His questionnaire was mailed to him on August 22, 1941, and was returned completed on September 2 (R. 18a). He was at that time 24 years of age and, according to his own statement, had no known physical or mental defects or diseases (R. 19a). In his questionnaire he stated that his occupation was "saloon-keeper-owner of tavern," that he "tended bar," that his average weekly earnings were $40, and that in his job he was an employer hiring seven paid workers

(R. 19a–20a). He listed as members of the family group in which he lived his wife and mother and father, and claimed that he began to contribute to his parents' support in 1935; that in the preceding 12 months he had contributed $1,500 to the support of the family group; that no one else contributed to their support; and that his parents were dependent upon him because his father was ill and unable to work (R. 21a, 23a). He stated that his mother owned the house in which the family group lived and that she also owned a farm valued at $1,000, from which a net income of $200 per year was derived (R. 23a). In a separate statement attached to his questionnaire he repeated his claim that he owned the tavern and supported his wife and parents therefrom and stated, in addition, that his father had been sick for the preceding six years and was unable to do any strenuous work; that upon his graduation from high school he "had to go in and take over this tavern;" that his mother helped in the business but was unable to carry it on because she could not read or write; and that he was the sole support of his wife and parents (R. 22a). On or about January 8, 1942, there was submitted to the board a certificate of one Doctor Pizzi stating that Stanziale's wife was expecting a baby in June 1942 (R. 27a).

On January 15, 1942, the local board classified Stanziale in Class III–A (R. 26a), as a man deferred by reason of dependency. (See R. 20.)

In April 1942, Stanziale filed with the board a supplemental questionnaire for registrants with dependents in which he stated that his wife was not working, that his father had been unemployed since 1936 because of sickness, that he had no brothers or sisters, and that his wife was expecting a baby in May of that year (R. 27a–28a).

On November 13, 1942, the local board reclassified Stanziale in Class I–A (R. 26a). He appealed this classification (R. 32a) and for that purpose (see *ibid.*) submitted six statements made by himself, his wife, his father, his mother, his father's doctor, and his mother's doctor (R. 32a–38a). In his own statement Stanziale asserted that he was the sole support of his wife, child,[1] mother, and father, and that they had no source of income other than the tavern business. He also claimed that his father had been unable to work since 1935 because of illness, that his mother suffered from heart trouble, and that his father and mother, although willing, were unable to carry on the business because they could not read or write (R. 32a–34a). The statements signed by his wife, father, and mother were all to the same effect (R. 32a–37a). In addition, his father stated that he had established the business and operated it until he was compelled by illness to turn over the management of it to his son (R. 36a). The doctors stated that the mother and father could

[1] The child was born in June 1942 (R. 5a).

not do "any physical work" because of their illnesses (R. 37a–38a). On December 11, 1942, the appeal board, by a vote of 5 to 0, classified Stanziale in Class I-A (R. 26a, 38a–40a). He was inducted into the Army on January 9, 1943 (R. 3a, 31a–32a).

On January 15, 1943, Stanziale's wife filed a petition for a writ of habeas corpus in the District Court for the District of New Jersey by which she sought to obtain his discharge from the Army on the ground that the action of the boards in reclassifying Stanziale in Class I–A was in disregard of the Selective Service regulations and was therefore unlawful, arbitrary, and capricious (R. 3a-8a). At the hearing on the petition no evidence was offered other than Stanziale's Selective Service file. (See R. 12a, 47a.) On the basis of the information contained therein, the district court concluded as a matter of law that Stanziale's classification in Class III–A on January 15, 1942, had been proper and that his reclassification by the local board on November 13, 1942, to Class I–A, "with nothing before it changing the situation that existed on January 15, 1942," was unlawful, arbitrary, and capricious (R. 13a). The court accordingly ordered Stanziale discharged (R. 9a).

On appeal to the Circuit Court of Appeals for the Third Circuit the order was reversed (R. 51a).

ARGUMENT

Petitioner contends (Pet. 7–8, 10–12) that the decision of the circuit court of appeals raises an important question in respect of the scope of judicial review in habeas corpus of Selective Service classifications. No such broad issue is, however, tendered by the facts of this case or the decision of the circuit court of appeals.

For the purpose of this case we may assume, as petitioner argues, that in a habeas corpus proceeding the court may set aside a Selective Service classification and order an inductee discharged if the boards failed to give the registrant fair consideration, or if their decision is not supported by evidence, or is based upon an error of law.[2] The decision below does not conflict with this concept. True, the court did say that "we do not think the examination and appraisal of these facts is our function" (R. 47a), but this, in effect, is no more than a holding that a Selective Service classification which is based upon evidence is final; that the courts will not substitute their judgment for that of the Selective Service System to which Congress entrusted the function of classification

[2] *United States* v. *Downer*, 135 F. (2d) 521, 525 (C. C. A. 2); *Seele* v. *United States*, 133 F. (2d) 1015, 1021 (C. C. A. 8); *United States* v. *Grieme*, 128 F. (2d) 811, 814 (C. C. A. 3); *Arbitman* v. *Woodside*, 258 Fed. 441, 442 (C. C. A. 4); *United States* v. *Reckord*, 51 F. Supp. 507, 511 (D. Md.).

and selection.[3] The opinion pointed out that there was no proof that the boards did not consider Stanziale's evidence or review the facts of his case and the court also held that the board's action in reclassifying him in Class I–A was in accord with the applicable Selective Service regulations (R. 47a–49a). It is thus evident that the court below considered all bases upon which a discharge in habeas corpus could be predicated, and found that none of them had been established. Its conclusion is fully justified by the facts.

1. *Stanziale received fair consideration.*—There is no evidence that the boards failed to consider the facts presented in Stanziale's questionnaire and the other documents he submitted to them. (See R. 47a.) On the contrary, it appears that the boards probably did consider such facts. Stanziale's questionnaire bears two penciled notations—one under his statement of ownership of the tavern reading, "ch. a/c in mother's name" (R. 19a); the other under his statement as to lack of income from his mother's house reading "second floor rented at $35 per mo." (R. 23a). Furthermore, Stanziale availed himself of the right of appeal and for the purpose he submitted six additional affidavits. The record shows that the appeal board considered "the facts of record" in classifying him in class I–A (R. 38a–39a).

[3] *United States* v. *Downer*, *supra*; *In re Rogers*, 47 F. Supp. 265 (N. D. Tex.); *Micheli* v. *Paullin*, 45 F. Supp. 687, 691 (D. N. J.).

2. *The I–A classification was supported by evidence.*—In November 1942, when Stanziale was reclassified from Class III–A to Class I–A, Selective Service regulation 622.31, as amended on July 11, 1942 (R. 21) provided for III–A classification of any registrant who had one or more dependents and was not engaged in a civilian activity necessary to war production or supporting the war effort. Regulation 622.32 (R. 21–22) defined a dependent as the wife or child of the registrant with whom he maintained a bona fide family relationship or, *inter alia,* a parent whose support he had assumed in good faith. In either case the status must have been acquired prior to December 8, 1941, at a time when the registrant's selection was not imminent. In amended Local Board Release No. 123, issued by the Director of Selective Service on July 15, 1942 (R. 22–29), imminence of selection was defined as follows:

> A registrant's selection is considered to be imminent at such time as in the course of his consideration by the local board that a reasonable man in his circumstances would be put on notice that in the normal course of events he would, at an early date, be called upon to perform military service.[4]

Thus, when the local board was called upon to reconsider Stanziale's classification in November

[4] The pertinent portions of this release are set forth in the Record at pp. 22–29.

1942 (see R. 26–27), it had perforce to consider two questions: (*a*) whether Stanziale's marriage, although prior to December 8, 1941, had occurred at a time when his selection was imminent; (*b*) whether he was entitled to continued deferment on the ground that his parents were dependent upon him as the sole source of support.

The evidence before the board supports its determination of these two issues against Stanziale.

(*a*) Stanziale married five days after the President had, on May 27, 1941, proclaimed a state of unlimited national emergency. At that time he was a young man of 24, in good health, in a non-essential occupation, with a relatively low order number. Had he been single, therefore, he might well have been inducted several months after June 1, 1941. The only basis on which it might be said that his selection was not imminent was the claim that when he married on June 1, 1941, his parents were dependent upon him. As to this question, the file shows that, although Stanziale claimed that he owned the tavern business, it had been operated as a family enterprise before he graduated from high school, that his mother still helped in the tavern on September 2, 1941, when he filed his questionnaire, and that there were employed in the business seven paid workers (R. 20a, 22a, 36a). On these facts the board might reasonably have come to the conclusion that the business could be carried on even if Stanziale was

inducted. Furthermore, the mother owned a farm from which she derived an income of $200 a year (R. 23a). In addition, the file indicates that the second floor of the home in which the family lived was rented at $35 per month (R. 23a). On the basis of all these factors, the board was justified in determining that Stanziale could not have expected a deferment on account of the dependency of his parents at the time he married.

The fact that Stanziale was actually classified in Class III–A in January 1942 in no way militates against this conclusion. It does not appear when the board discovered the facts that the tavern business was a family enterprise and that the second floor of the family house was rented; these facts may have come to the board's attention after January 1942. Moreover, Stanziale's wife was pregnant at that time and the board may well have deferred him temporarily for that reason, although it was not required to do so.[5] That the board proved to be more lenient than it was required to be would not justify the conclusion that Stanziale had no reason to believe that his selection was imminent at the time he married.

(*b*) In respect of the claimed dependency of Stanziale's parents in November 1942, the board

[5] Stanziale's wife was not a dependent under regulation 622.31 in effect on January 15, 1942, since the regulation then provided that dependency should not be ground for deferment if such status was voluntarily acquired after September 16, 1940 (R. 20).

obviously took into consideration the facts stated in the preceding paragraph and was clearly justified in reaching the conclusion that the parents were not actually dependent upon him. Furthermore, at that time the board was entitled to consider the fact that his parents would be eligible to receive $30 per month and his wife $62 per month under the Servicemen's Dependents' Allowance Act of June 23, 1942 (Secs. 105, 106, 56 Stat. 382, 37 U. S. C., Supp. II, 205, 206).[6] In addition, by November 1942 Stanziale's child was four months old and his wife apparently restored to normal health. The board therefore could justifiably have concluded that, although the wife may have been unable to assist in the business in January 1942, when she was pregnant, her assistance, together with that of the father and mother and seven paid employees, would enable the family to keep the tavern running and thus support themselves.

3. *The determination of the draft board was not based upon an error of law.*—As we have shown, the conclusions of the draft board that Stanziale's marriage took place at a time when his selection was imminent and that his parents were not actually dependent upon him for support, are based

[6] Amended Local Board Release No. 123, issued on July 15, 1942, provided that allowances under this statute should be considered in determining questions of deferment on the ground of dependency. (See R. 24–25).

on substantial evidence. Hence, there was no justification for the holding of the district court that Stanziale's reclassification in November 1942 was contrary to the regulations. The district court's determination that the situation was unchanged between January 1942, when Stanziale was classified III–A, and November 1942, when he was reclassified I–A, overlooked the fact that in January 1942 Stanziale's wife was pregnant, whereas by November 1942 she was restored to normal health, and further disregarded the fact that in the meantime the Servicemen's Dependents' Allowance Act had been passed and all draft boards had been directed, in order to meet anticipated calls, to review the classifications of registrants with collateral dependents (Amended Local Board Release No. 123, R. 26–27).[7] The circuit court of appeals therefore properly overruled the district court's conclusion that the action of the draft board was unlawful, arbitrary and capricious.

CONCLUSION

The decision below is correct and it presents no real conflict of decisions and no substantial ques-

[7] As we have shown, *supra*, note 5, Stanziale was in the position of one deferred because of collateral dependents since his wife was not a dependent under the regulations in effect when he received his III–A classification.

tion. We therefore respectfully submit that the petition for a writ of certiorari should be denied.

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